

To: National Center for State Courts

From: GBA Strategies

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## 2018 State of the State Courts – Survey Analysis

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This year's State of the State Courts survey reveals views toward state courts have largely held steady and in a few cases improved. This, despite a year that saw widespread political attacks on judges, campaign accusations of special interest influence on the court system, and increasingly partisan battles over judicial elections and nominations. While overall views of state court systems have held strong in this environment, this narrative has done little to alleviate well-established concerns of bias, inefficiency, and a two-tiered justice system weighted against 'regular' people.

In addition to our regular tracking measures, this year's research also examined three areas identified by NCSC's advisory group as critical issues facing state courts across the country:

- **Cash Bail Reform:** Voters are primed for a discussion on cash bail. In 2018, criminal justice reform emerged as a major campaign issue across the partisan spectrum, and California became the first state to eliminate cash bail. Our research shows voter support for cash bail is malleable. Voters acknowledge the unfairness of cash bail and are open to reform, including allowing judges more discretion in pre-trial release decisions.
- **Self-Represented Litigants:** Currently, there is limited understanding of, or interest in, self-representation, outside of traffic violations, given the complexity of navigating the court system and the stakes involved. However, there is some openness to utilizing partial representation, alternative means of dispute resolution, and legal assistants who can make sense of court forms.
- **Online Dispute Resolution.** The online alternative to in-person court appearances finds widest acceptance for minor infractions or disputes. Online isn't seen as appropriate for family matters. Younger, college educated, and higher income voters are more likely to be online and to be open to online dispute resolution. Cost and efficiency are drivers for using online over appearing in-person.

Overall, while voters have a variety of concerns with the status quo in their respective state courts, the demand for change is not so great that they are willing to embrace significant changes without reassurance and education. Alternatives that demonstrate the potential to save taxpayers money, make the courts more efficient, reduce inequalities in the justice system, and empower regular citizens to navigate the complexities of the court system on their own show the greatest potential to ultimately win public support.

The State of the State Courts is an annual national survey conducted on behalf of the National Center for State Courts. The following are key findings and recommendations based on a survey of 1,000 registered voters conducted November 13-17, 2018. The poll is subject to a margin of error of +/- 3.1 percentage points at the 95 percent confidence level.

### Key Findings

- State Courts remain a trusted institution across party lines.** Voter confidence in the state court system has reached a new high since tracking began in 2012. Three-quarters (76%) now say they have a great deal or some confidence, while less than a quarter (22%) say they have not much or no confidence at all in the state court system. This confidence holds across party lines. Governor and state legislature ratings fall well below the courts, as usual.

Supreme Court ratings appear consistent at first glance, but upon deeper examination, it appears the contentious Kavanaugh nomination has impacted views of the highest court in the land. Confidence in the Supreme Court has tumbled among Democrats and increased markedly with Republicans. The federal court system is similarly impacted. However, the state court system appears to have suffered no blowback from the partisan hearings, with confidence ratings holding relatively consistent among partisans of both parties and the greatest gains coming among Independents.

The United States Supreme Court						
	2017		2018		Change	
	Conf	No Conf	Conf	No Conf	Conf	No Conf
Democrats	72%	26%	60%	38%	-12%	+12%
Independents	76%	23%	71%	27%	-5%	+4%
Republicans	80%	19%	90%	9%	+10%	-10%

The State Court System						
	2017		2018		Change	
	Conf	No Conf	Conf	No Conf	Conf	No Conf
Democrats	72%	25%	74%	24%	+2%	-1%
Independents	67%	32%	77%	20%	+10%	-12%
Republicans	75%	22%	77%	19%	+2%	-3%

Voters are more likely than not to agree with a variety of statements that the courts are working in the interest of the people they represent. The state court system also continues to

be best described as *hard working* and *fair and impartial* and has made small to modest gains (1- to 5-point increases) on a range of positive attributes.

- **There is still room for improvement. Challenges remain on political bias, racial bias, inefficiency, and lack of innovation.** Job performance ratings are the strongest they have been since this project began, but equal numbers give state courts positive and negative ratings (48% excellent/good, 49% only fair/poor). The potential for growth is clear.

Concerns exist about who the current system is working for. Mistrust of the courts runs high with African American voters, who are least likely to agree the courts are *unbiased in their case decision* (37% agree, 59% disagree) and are *taking the needs of people into account* (41% agree, 56% disagree). There is a large gap between white and African American voters on the system being *fair and impartial* (white: 66% describes, AA: 36% describes) and *providing equal justice for all* (white: 56% describes, AA: 29% describes). Voters, particularly non-white voters, believe more can be done by judges to understand the needs of those in their courtrooms.

Which comes closer to your own view?	Total	White	Af-Am	Hisp
In general, judges in (STATE) courts reflect the values of our communities and understand the challenges facing the people who appear in their courtrooms.	43	46	28	38
Too many judges in (STATE) courts don't understand the challenges facing people who appear in their courtrooms and need to do a better job of getting out into the community and listening to people.	52	48	68	61

And while we see no evidence that the political nature of the Supreme Court hearings impacted voter confidence in the state courts, they are still perceived as *political* (59% describes, 27% does not describe). The state court system has also seen no improvement on being *innovative* (42% describes, 49% does not describe) or *inefficient* (50% describes, 44% does not describe).

- **Support for cash bail is malleable, and there is a clear opening for reform.** Without an alternative, a majority (59%) support the practice of cash bail, while a third (34%) oppose it, although there is little intensity on either side of the debate, showing how soft public opinion is on this issue. At the same time, a majority (50%) recognizes cash bail produces a two-tiered justice system. This view is held by clear majorities of African Americans, younger, and college-educated voters.

Nearly three-quarters find the top message statements tested in this survey to be convincing reasons to support cash bail reform, even a majority of those initially supportive of the practice of cash bail. Messaging highlighting the inefficiency of the system causing defendants to languish in jail and the expense to taxpayers are reform proponents’ strongest arguments across groups. In addition, highlighting wealth disparities and forced guilty pleas to avoid imprisonment can work with some voter segments. Racial disparities and the increased likelihood for repeated arrest are less compelling arguments.

Proponent Arguments (% Convincing)	Total	Dem	Ind	GOP	White	Af-Am	Sppt Bail
People who cannot afford their bail are locked up while their cases go through the courts, which can take weeks, months, or even years. While waiting for a trial, these defendants are at risk of losing their job, custody of their children, and their home, all without being convicted of a crime.	74	75	75	71	76	64	72
Sending defendants to prison who can't afford to post bail is a bad investment for taxpayers. The majority of defendants jailed while awaiting trial are lower-risk and charged with non-violent crimes. But it costs U.S. taxpayers approximately \$38 million every day, or fourteen billion dollars annually, and makes it harder for the justice system to focus on keeping our communities safe from violent felons.	70	75	73	61	71	74	66

After messaging, voters were presented with the option of allowing “judges to determine whether a defendant should be detained based on their individual case, previous offenses, and personal circumstances” as an alternative to cash bail – similar to that of the policy adopted by California earlier this year. Nearly three-quarters (73%) support this proposal and only a quarter (24%) oppose. The proposal received strong support across party and racial lines.

- Voters feel ill-equipped to navigate the court system without an attorney and lack confidence in their ability to represent themselves.** A broad majority (59%) say “state courts are not doing enough to empower regular people to navigate the court system without an attorney.” Only a third (33%) believe courts are providing the information to do so. By similar margins, 61% of voters say they don’t believe they “could represent myself in court, regardless of what resources and information are provided” while just 36% feel confident in finding the information they need. No group feels empowered or confident on their own, even those with previous court experience or who have said it was easy to locate information in the past.

This trepidation is reflected in voters’ unwillingness to represent themselves in most of the specific types of cases presented to them. Traffic violations were the only area voters felt comfortable being able to handle themselves, along with some mild interest in doing so when it comes to housing disputes. Criminal, family, breach of contract, and personal injury cases were non-starters for self-representation.

- Voters show a tepid interest in alternative methods to representation and dispute resolution.** Voters with previous experience dealing with the courts are slightly more likely to try alternatives presented to them. More information is clearly needed for voters to decide whether they want to engage with these new resources; while they make it clear that they would like alternatives to hiring a lawyer for full representation, their lack of confidence or familiarity with the alternatives presented leaves them choosing ‘the devil they know.’ Online dispute resolution receives the most interest across groups. If voters are seeking to access an attorney, they prefer in-person over an online or phone-only option.

% very/somewhat likely	Total	Court Experience	No Court Experience
Online dispute resolution	64	66	58
Attorney representing a portion of a case	62	63	54
Self-help websites and web-based resources	59	60	54
Licensed professionals for legal form preparation	57	58	51
Court staff helping with forms, no legal advice	56	61	42
Phone/Online access to an attorney	52	54	43

- Online dispute resolution is seen as a cost-effective way to resolve smaller cases.** There is a clear distinction in the type of cases the public is ready to consider for online dispute resolution. Traffic tickets, consumer debt, and small claims are all seen as a good place to start. Housing disputes and receiving a verdict of settlement are of less interest now, but could find more openness over time. Voters who are younger and with a higher educational attainment or incomes are more likely to opt for an online resource over the courthouse. No group finds an online alternative for dealing with family matters to be appropriate.

% Handle online	<50	50+	Non-Coll	Coll	<\$30K	\$30-75K	\$75K+
Traffic ticket	<b>74</b>	59	61	<b>74</b>	56	69	<b>74</b>
Consumer debt	<b>58</b>	45	47	<b>57</b>	41	51	<b>61</b>
Small claims	<b>53</b>	38	42	<b>50</b>	39	47	<b>51</b>
Verdict/Settlement	<b>44</b>	30	31	<b>45</b>	28	34	<b>48</b>
Landlord/Tenant	<b>39</b>	31	31	<b>40</b>	21	35	<b>44</b>
Divorce proceeding	21	17	16	23	10	21	22
Child custody	8	5	6	8	1	8	9

Being a new resource and technology, few are likely to understand how ODR works in the beginning. At this time, voters are currently more likely to say the court system they know is easier to understand (33% online, 63% court) and better suited for self-representation (40% online, 56% court). Voters also believe the in-person court experience is more likely to be fair and impartial (38% online, 54% court). However, the complexity of the court system and concerns about retaining a lawyer lead voters to believe an online system would be more cost effective (65% online, 32% court) and efficient (55% online, 41% court).

It is important to note that, similar to the dynamic with cash bail, it is clear that voters have very ‘soft’ beliefs when it comes to ODR, and that further education and experience could dramatically shift these numbers.